IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1764 OF 2004

Union of India & Ors. ..Petitioners.

Vs.

Nand Lal Parihar ..Respondent.

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Mr. Suresh Kumar with Mr. Y.R. Mishra i/b T.C. Kaushik for the petitioners.
Mr. P.A. Prabhakaran i/b S.G. Pillai for the respondent.

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CORAM : DALVEER BHANDARI, C.J.&
DR.D.Y.CHANDRACHUD, J.

10th August, 2004.

P.C. :

1. The respondent belongs to a Scheduled Caste and joined the revenue service of the Union in 1978. In 1989, he was promoted as Joint Commissioner of Income Tax and in 2000 as Additional Commissioner of Income Tax, a post which he presently occupies at Mumbai. The claim of the respondent for promotion as Commissioner of Income Tax was considered in 2001 and 2002. In the promotion order of 2001, 394 Additional Commissioners were promoted but not the Respondent whereas, in the promotion order of January 2002, 49 of his juniors have been promoted. The respondent moved the Central Administrative Tribunal which has

decided upon his grievance by the impugned judgment dated 20th November, 2003.

2. The Tribunal has directed that a review DPC be convened for considering the case of the respondent for promotion. The Tribunal has ruled that the ACRs for the years 1997-98 and 1998-99 will have to be ignored for the reason that the downgrading of the confidential entries for these two years was not communicated to the respondent. The respondent was graded as “Good” in the ACRs for the years 1995-96, 1996-97 and 1999-00. For 2000-01 he has been graded as “Outstanding”. The Tribunal was of the view that having regard to the judgment of the Supreme Court in **U.P. Jal Nigam v. Prabhat Chandra Jain** ((1996) 2 SCC 363) and the judgment of a Division Bench of this Court in **Dr. Binoy Gupta v. Union of India** (2002(3) ATJ 7) the downgrading of the ACR entries from “good” to “average” for 1997-98 and in 1998-99 to “Just Good” necessitated a communication to the respondent since the effect thereof would be to seriously prejudice his claim for promotion to the next post in the hierarchy. The Tribunal has noted that another Scheduled Caste officer by the name of Shri. Manikchand who was similarly placed was also considered and the

said officer, who had five good ACRs was promoted to the post of Commissioner of Income Tax. The Review DPC has been directed to consider the case of the respondent on the same basis.

3. Having heard the learned counsel appearing on behalf of the contesting parties, we are of the view that no case for interference under Article 226 of the Constitution has been made out. The view taken by the Tribunal is in accordance with the law laid down by the Supreme Court in **U.P. Jal Nigam**'s case. The submission of the employer before the Supreme Court in that case was that a mere downgrading of the entries in the confidential reports could not be termed as adverse so as to obligate the employer to communicate such an entry to the employee. This submission was repelled by the High Court. The Supreme Court held that even a positive confidential entry in a given case can 'perilously' be adverse and, to say that an adverse entry should always be qualitatively damaging may not be true. This decision was followed by a Division Bench of this Court in **Dr. Binoy Gupta**'s case (supra). The Division Bench held there that the non-selection of the petitioner to the post of Chief Commissioner of Income Tax on the basis of a downgrading of the ACR from “very good” to

"good" in successive years would stand vitiated where such a downgrading had not been communicated. The view of the Tribunal is thus consistent with the law laid down by the Supreme Court and as followed in the judgment of the Division Bench of this Court.

4. Apart from this, the Tribunal has perused the service record of the respondent and has found that this is a case where an officer belonging to a Scheduled Caste has been constrained to seek recourse to his legal remedies on several occasions in order to ensure that his just entitlements are made available to him in accordance with law. After he joined service in 1978, the respondent was entitled to a Senior Time Scale in Group A from 1st November, 1982. Since it was not granted to him, the Respondent submitted a Memorial to the President in 1986 upon which the scale was granted to him on 12th October, 1993 with effect from 1st November, 1982. While the respondent was agitating against the issuance of certain adverse ACR entries, he was placed under suspension on 20th October, 1985. He was not granted even the subsistence allowance until January 1996 and it was paid to him at the end of 22 months of suspension. A

departmental enquiry was initiated in September 1986 and this resulted in a penalty in July 1992 of withholding increments for five years without cumulative effect. This resulted in a deprivation of annual increments, the denial of Senior Time Scale and a denial of promotion as Deputy Commissioner which was otherwise due in 1987. The respondent thereupon moved the Jaipur Bench of the Tribunal which allowed the original application in January 1996. The observations of the Jaipur Bench of the Tribunal have been extracted in the impugned judgment and, it would be worthwhile for us to refer to some of those findings.:

> "In view of what has been discussed above, we have been persuaded to accept the allegation that the actions of the officers of the respondents' department were suspect and not without malice and malafides. It appears that there was premeditated intention to harass and prejudice the applicant in whatever manner possible by the officers of the Jaipur level i.e. the then Chief Commissioner of Income Tax, G.C. Agarwal & Others in the Board who in spite of the clear rulings and instructions of the Government kept the applicant under suspension without issuing him a charge sheet. The applicant is not even paid his subsistence allowance. The most hard hitting action was in not giving him the due higher scale which he was entitled to as long back as November 1982 and refix his pay in terms of IVth Pay Commission in 1986. His due increment which cannot be stopped without an order of competent authority were withheld for more than ten years in the higher scale of pay of the senior time scale or even junior time scale of pay. His name was not put for consideration by the DPC even though admittedly a DPC was

> held in April 1987 when his batch mates were considered and promoted. Therefore, there is an unmistakable indication that the respondents have chosen to punish him, unmindful of the irregularity and illegal procedures and they succeeded in denying him both the rights of drawal of due increments for more than ten years as also his right of being considered for promotion. These Civil injuries caused to the applicant cannot be allowed to be perpetuated with impunity by the respondents."

Having thus considered the matter in all its perspectives, we are of the view that the impugned order is just and fair and does not warrant interference under Article 226 of the Constitution. We find no merit in the petition which is accordingly rejected.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.